



COUNTY ADMINISTRATOR'S OFFICE

PIMA COUNTY GOVERNMENTAL CENTER
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C.H. HUCKELBERRY
County Administrator

December 3, 2013

Jim Upchurch, Forest Supervisor
Coronado National Forest
300 W. Congress Street
Tucson, Arizona 85701

Re: Your Letter of November 19, 2013 Regarding the Memorandum of Agreement Relative to Resolution of Adverse Effects on Historic Properties from the Proposed Rosemont Copper Mine

Dear Mr. Upchurch:

Pima County will be unable to execute the subject agreement transmitted in your November 19, 2013 letter. We do not believe the project proponent, Rosemont Copper Company, has provided sufficient mitigation for the irreversible loss of historical and cultural values, nor has adequate consideration been given to tribal concerns and mitigation proposals.

The Sonoran Desert Conservation Plan adopted by Pima County is a community consensus plan for protecting the historic, cultural and biological resources of the County. The mitigation proposed by Rosemont Copper Company falls short of this locally accepted plan for mitigating adverse impacts for many of the same reasons identified in the letter from the Chairman of Tohono O'odham Nation.

The County declines to participate in the Memorandum of Agreement.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Huckelberry", is written over a large, stylized flourish that extends from the signature down towards the typed name below.

C.H. Huckelberry
County Administrator

Enclosure

c: The Honorable Chairman and Members, Pima County Board of Supervisors
The Honorable Dr. Ned Norris, Jr., Chairman, Tohono O'odham Nation
Linda Mayro, Director, Sustainability and Conservation
Nicole Fyffe, Executive Assistant to the County Administrator



United States
Department of
Agriculture

Forest
Service

Coronado National Forest
Supervisor's Office

300 W. Congress
Tucson, Arizona 85701
Phone (520) 388-8300
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Deaf & Hearing Impaired 711

File Code: 1950/2810/2360

Date: November 19, 2013

C.H. Huckleberry
County Administrator
Pima County Administrator's Office
130 W. Congress, 10th Floor
Tucson, AZ 85701

Dear Mr. Huckleberry:

Enclosed please find the Rosemont Copper Project Section 106, Memorandum of Agreement (MOA) showing the signatures that we have received to date. These include the required signatories (Forest Service, Army Corps of Engineers, Arizona State Historic Preservation Office, and Advisory Council on Historic Preservation) as well as Rosemont Copper Company. Arizona State Land Department and the Arizona State Museum have also signed the MOA as concurring parties.

Exhibits A, D and E are included with the enclosed MOA. Exhibits B and C, the Federal HPTP (Historic Properties Treatment Plan) and Utilities HPTP respectively, continue to be available on the SWCA website. The access information is the same as our last correspondence; if you need the directions to gain access to the website, contact Bill Gillespie, Forest Archeologist at 520-388-8392 or wgillespie@fs.fed.us.

I have also enclosed three letters we received in response to inviting parties to sign the MOA. These include correspondence from the Arizona State Historic Preservation Office and Advisory Council on Historic Preservation sent when they signed the MOA and a letter from Chairman Norris of the Tohono O'odham Nation explaining his reasons for not signing the MOA.

The invitation to consulting parties to sign the MOA is still open. If you wish to do so, please return the signed document or signature page using photocopy, facsimile, or counterpart signature pages including scanned copies by email to:

Jamie Kingsbury, Deputy Forest Supervisor
Email: jkingsbury@fs.fed.us
Fax: (520)388-8305 Attn: Jamie Kingsbury
Address: Coronado National Forest
300 W. Congress Ave, Suite 600
Tucson, AZ 85701

I want to personally thank all of you who attended any of the Section 106 meetings and field trips we have held over the past year and a half. Many of you have made major contributions to seeing that adverse effects to historic properties are properly addressed.

Sincerely,



JIM UPCHURCH
Forest Supervisor

Enclosures



Caring for the Land and Serving People

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MEMORANDUM OF AGREEMENT
AMONG THE
CORONADO NATIONAL FOREST,
ARIZONA STATE HISTORIC PRESERVATION OFFICER,
ADVISORY COUNCIL ON HISTORIC PRESERVATION,
U.S. ARMY CORPS OF ENGINEERS,
AND THE ROSEMONT COPPER COMPANY,
REGARDING RESOLUTION OF ADVERSE EFFECTS ON HISTORIC PROPERTIES FROM
THE ROSEMONT COPPER PROJECT

WHEREAS, the Rosemont Copper Company (Rosemont) proposes to construct and operate a mine to extract locatable minerals, including copper, molybdenum, and silver (Project) pursuant to the General Mining Law of 1872, as amended (30 U.S.C. §§ 22-47 [2006]), and has submitted a proposed mine plan of operations (MPO) to the Coronado National Forest (Forest), subject to Forest approval with appropriate environmental conditions included in a final MPO under 36 CFR § 228.5; and

WHEREAS, the Project consists of the construction, operation, and reclamation of the Rosemont Copper Project and associated infrastructure and ancillary facilities, including a water pipeline, a 138-kilovolt transmission line with an associated maintenance road, relocation of an electric distribution line, commissioning and decommissioning of Forest roads, and relocation of a portion of the Arizona National Scenic Trail (Arizona Trail); and

WHEREAS, the Project will be situated on 995 acres of private land owned by Rosemont, 3,670 acres of land managed by the Forest, and 75 acres of State land managed by the Arizona State Land Department (ASLD); and

WHEREAS, Tucson Electric Power Company will supply electrical power to the Project via a 138-kilovolt transmission line pursuant to a Certificate of Environmental Compatibility (CEC) from the Arizona Corporation Commission (ACC), which was granted on June 12, 2012, by order of the ACC following the ACC's public notice and hearing process; and Rosemont will construct a water pipeline to the mine, and both the transmission line and water pipeline will be co-located within a utility corridor, and are subject to Arizona laws, and will require rights-of-way from the ASLD; and

WHEREAS, the U.S. Department of Agriculture Forest Service serves as the lead Federal agency for compliance with the National Environmental Policy Act (NEPA) (42 U.S.C. §§ 4321-4347), the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. § 3001), and the National Historic Preservation Act (NHPA) as amended (16 U.S.C. § 470f) for the Project; and the Forest has considered several Project alternatives in the Environmental Impact Statement for the Rosemont Copper Project (EIS); and

WHEREAS, the U.S. Army Corps of Engineers (COE), a Federal cooperating agency in preparing the EIS, with authority to issue permits under Section 404 of the Clean Water Act for various aspects of the Project, has designated the Forest as the lead agency under 36 CFR § 800.2(a)(2) to act on its behalf to fulfill its responsibilities under Section 106 and is a signatory to the MOA; and

WHEREAS, the Forest has consulted with the Arizona State Historic Preservation Office (SHPO) in its role of advising and assisting Federal agencies in carrying out their responsibilities under Sections 101 and 106 of the NHPA; and pursuant to 36 CFR Part 800, regulations implementing Section 106, at §§ 800.2 (c) (1) (i) and 800.6 (b); and in accordance with the *First Amended Programmatic Agreement Regarding Historic Property Protection and Responsibilities Among New Mexico State Historic*

Preservation Officer and Arizona State Historic Preservation Officer and Texas State Historic Preservation Officer and Oklahoma State Historic Preservation Officer and the Advisory Council on Historic Preservation and United States Department of Agriculture Forest Service Region 3, dated December 24, 2003 (Region 3 Programmatic Agreement), and the SHPO is a signatory to this Memorandum of Agreement (MOA) under 36 CFR § 800.6(c)(1); and

WHEREAS, the Forest, in consultation with the SHPO, as required by 36 CFR § 800.4(a)(1), has defined the Project's Area of Potential Effects (APE) to include the area enclosed within the mine perimeter fence, the associated access roads, the re-route of the Arizona Trail, the associated utilities corridor, and the area in which historic properties may be visually, audibly, and atmospherically affected by the undertaking (see Exhibit A); and

WHEREAS, under 36 CFR § 800.4(b), the Forest has consulted with SHPO and has identified historic properties within the APE through public scoping, archival research, oral history, and archaeological surveys; as described in the following reports (for full citations, see Exhibit E): *Archaeological Survey of Approximately 67.1 Acres in the Coronado National Forest, Pima County, Arizona* (Petersen 2007); *Results of an Archaeological Class I Inventory of Four Alternatives for the Proposed Rosemont Copper Mine, Rosemont Junction, Pima County, Arizona* (Petersen and Griset 2010); *Archaeological Survey of Alternatives to the Proposed Rosemont Copper Mine, Pima County, Arizona* (Barr et al. 2010); *A Cultural Resources Inventory of Approximately 3.3 Acres Near Santa Rita Road and South Country Club Road, East of Sahuarita, Pima County, Arizona* (Martin 2011); *Archaeological Survey for the Proposed Rosemont Copper Mine, Pima County, Arizona: Final Report* (Ezzo et al. 2011); *A Cultural Resources Inventory of Approximately 84 Acres Near Sahuarita, Pima County, Arizona* (Chamorro 2011); *An Ethnohistory of the Rosemont Copper Project Area in the Eastern Santa Rita Mountains, Pima County, Arizona* (Griset 2011); *A Revised Cultural Resources Inventory of Approximately 84 Acres Near Sahuarita, Pima County, Arizona* (Chamorro and King 2012); *A Cultural Resource Survey of the 46kV Alternative and Additional Areas for the Rosemont Project 138kV Line* (Swanson et al. 2012); *A Cultural Resources Inventory of Two Contiguous Arizona Department of Transportation Encroachment Permit Areas Along State Route 83 for Rosemont Copper, Pima County, Arizona* (Lindley and Buckles 2012); *National Register of Historic Places Registration Form: Ce:wi Duag ("Long Mountain" in O'odham)* (Griset, Gillespie, and Farrell 2012); *A Cultural Resource Survey for the Rosemont Project Utility Corridor* (Sheehan et al 2013); *A Cultural Resource Survey of Additional Areas for the Rosemont Project Utility Corridor, Pima County, Arizona* (Rayle 2013); *Rosemont Copper: A Cultural Resources Inventory Within and Around Helvetia, Pima County, Arizona* (Deaver 2013); and

WHEREAS, under 36 CFR § 800.4(c), the Forest evaluated all identified cultural resources within the APE for their eligibility under 36 CFR Part 63 for the National Register of Historic Places, and, as required by 36 CFR § 800.5(a), in consultation with the SHPO, consulting Indian Tribes (Tribes), and other consulting parties, has applied the criteria of adverse effect to historic properties within the APE and has determined that the Project will have an adverse effect on multiple historic properties within the APE; and

WHEREAS, the Forest has notified the Advisory Council on Historic Preservation (ACHP) of the Project's adverse effects on historic properties, in accordance with 36 CFR § 800.6(a)(1), and the ACHP has chosen to participate in the consultation under 36 CFR § 800.6(a)(1)(iii) and to be a signatory to the MOA; and

WHEREAS, Rosemont is entitled to participate in the Section 106 consultation process under 36 CFR § 800.2(c)(4) and in the development of this MOA, per 36 CFR § 800.6(a)(2), because of its obligations and duties to implement the mitigation measures required by the MOA, has been invited by the Forest to be a signatory to this MOA under 36 CFR § 800.6(c)(2)(iii); and

WHEREAS, the Forest has gone through a consultation process to identify, notify, and seek consultation with federally recognized Tribes that have religious or cultural ties to the Project area, or whose direct ancestors had historic or pre-historic religious and cultural ties to historic properties that may be affected by the undertaking; and

WHEREAS, under 36 CFR § 800.2(c)(2)(ii), the Forest has engaged in or has made a good faith effort to engage in government-to-government consultation with the Ak-Chin Indian Community, Fort Sill Apache Tribe, Gila River Indian Community, Hopi Tribe, Mescalero Apache Tribe, Pascua Yaqui Tribe, Pueblo of Zuni, Salt River Pima-Maricopa Indian Community, San Carlos Apache Tribe, Tohono O'odham Nation, White Mountain Apache Tribe, and Yavapai Apache Nation and has invited the Tribes to participate in the identification and evaluation of historic properties, including traditional cultural properties (TCPs), to provide information about past and ongoing uses of the area by Native Americans, to assess the effects the undertaking will have on historic properties, and to discuss ways in which to avoid and mitigate effects on historic properties; and

WHEREAS, the Tribes have apprised the Forest, SHPO, and other consulting parties of their opposition to the Project, and the legislative councils of the Tohono O'odham Nation, Salt River Pima-Maricopa Indian Community, Pascua Yaqui Tribe, and San Xavier District of the Tohono O'odham Nation have set forth resolutions in opposition to the Project because the Project would significantly impact, destroy, or alter cultural and archaeological sites containing cultural resources and sacred objects of the O'odham, and would permanently and negatively alter the cultural and natural landscapes of the area, and would cause adverse effects on TCPs, including *Ce:wi Duag*, which is of particular cultural and religious significance to the Tribes; and

WHEREAS, many Tribes have apprised the Forest, SHPO, and other consulting parties that they oppose implementation of the Project until after all presumed litigation on this Project is resolved in order to prevent unnecessary permanent and direct effects to historic properties; and,

WHEREAS, despite their opposition to the Project and strong beliefs that the effects of this Project cannot be mitigated, many Tribes have participated in the development of this MOA and the Forest has invited them to be concurring parties to this MOA under 36 CFR § 800.6(c)(3); and

WHEREAS, Pima County has apprised the Forest, SHPO, Tribes, and other consulting parties of its opposition to the Project, and the Board of Supervisors has set forth a resolution, BOS Resolution 2007-15, January 16, 2007, in opposition to the Project.

WHEREAS, the Forest has consulted with the ASLD, Tribes, and other consulting parties regarding the potential effects the Project may have on historic properties within the utility corridor on State lands under its jurisdiction; and the ASLD is responsible for ensuring that adverse effects to historic properties on State lands are appropriately addressed in accordance with its legal obligations under State law (A.R.S. § 41-861 *et seq.*); and the Forest has invited ASLD to be a concurring party to this MOA; and

WHEREAS, the ASLD has the authority and responsibility to approve activities related to the undertaking on State lands in fulfillment of the terms of the ACC's order;

WHEREAS, the Forest has consulted with the Arizona State Museum (ASM), which is responsible for issuing permits for archaeological data recovery on State land per A.R.S. § 41-841 *et seq.*, the Arizona Antiquities Act, and for coordinating responses to the discoveries of human remains, funerary objects, sacred ceremonial objects, and objects of national or tribal patrimony on State and private land under A.R.S. §§ 41-844 and 41-865, and the Forest has invited the ASM to be a concurring party to this MOA; and

WHEREAS, the Forest has consulted with Pima County and the Town of Sahuarita as part of the Section 106 process, and each has been invited to be a concurring party to this MOA; and

WHEREAS, the Forest has made diligent efforts to involve the public, property owners, and other interested parties early in the Federal decision-making process by notifying them of the Project and its impacts through the NEPA process and providing them with information on the Project and opportunities to comment on the preparation of the EIS, including at several public meetings, as required by the Council on Environmental Quality's regulations implementing NEPA (40 CFR § 1506.6), the NHPA's implementing regulations (36 CFR §§ 800.2(d); 800.6(1)(4)), and the Region 3 Programmatic Agreement; and

WHEREAS, per 36 CFR § 228.13, Rosemont is required to post a bond to ensure reclamation of surface disturbance to prevent or control damage to forest surface resources, per 36 CFR § 228.8(g); and

WHEREAS, for purposes of this MOA, all terms are used in accordance with 36 CFR § 800.16, 36 CFR § 79.4, and the Region 3 Programmatic Agreement;

NOW, THEREFORE, the Forest, SHPO, ACHP, COE (collectively, Signatories), and Rosemont or Invited Signatory agree that the Project will be implemented in accordance with the following stipulations to take into account the effect of the undertaking on historic properties.

STIPULATIONS

The Forest, and COE, as applicable shall ensure that the following measures are carried out:

I. Professional Qualifications

All historic preservation work carried out under the terms of this MOA and under its jurisdiction will be overseen by an individual who meets either the Secretary of Interior's Standards and Guidelines for Archaeological and Historic Preservation (48 *Federal Register* 44,716-44,742, September 23, 1983) or the qualification requirements in the Region 3 Programmatic Agreement, and takes into consideration the National Park Service's applicable guidance.

II. Federal Historic Properties Treatment Plan (Federal HPTP)

- A. The Forest shall continue to consult with the consulting parties to finalize, approve, and implement the Federal HPTP (Exhibit B) for historic properties adversely affected on federal and private lands within the APE. The Federal HPTP describes all historic properties within the APE for all alternatives, other than those properties located on State lands, and those effects. The Federal HPTP will detail treatments to avoid, minimize, or mitigate adverse effects to historic properties caused by the alternative selected by the Forest in its Record of Decision (ROD). The Federal HPTP shall comprise:

1. A Data Recovery Plan for those historic properties eligible for their archaeological information potential and that cannot be avoided, which will include:
 - a) the research design encompassing the entire Project including the utility corridor and data requirements needed to address the research questions;
 - b) the methods and techniques to be used for archival research, field investigations, collections processing, curation, data analysis, and reporting;
 - c) the means for conveying the public benefit of the mitigation; and
 - d) a Project Suspension/Termination Plan that stipulates the procedures to be followed if the Project is halted during data recovery for any reason.
 2. A Plan for the Treatment of Human Remains, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony (Burial Plan). The Burial Plan sets forth the procedures for identifying, treating, and transferring custody of human remains, funerary objects, and sacred objects discovered during Data Recovery or Project work on Federal or private land within the APE. The Burial Plan incorporates the provisions of both a Plan of Action prepared under NAGPRA, which applies to Federal land, and a burial agreement prepared under Arizona statute, which applies to private land;
 3. A Discovery Plan with the procedures for inadvertent discoveries of cultural resources and/or human remains after data recovery investigations have been completed which will require Rosemont to notify the Forest of any such discoveries during the construction or operation of the mine and the ASM for discoveries on State and private land;
 4. A Monitoring Plan that describes monitoring training and monitoring procedures (both short and long term) and which identifies historic properties to be avoided and sensitive sites with the potential for human remains; and
 5. Treatments to mitigate impacts to the *Ce:wi Duag* TCP (see below).
- B. The draft Federal HPTP will be revised after the Draft ROD is issued and an alternative selected. Only conforming changes to account for final project design and to present measures taken to avoid, reduce, or mitigate effects to historic properties subject to effects from the selected alternative will be made. The revised Federal HPTP may also include proposed staged data recovery schedule that coincides with phased development of the Project.
- C. Within thirty (30) calendar days of the issuance of the Draft ROD, the Forest will provide consulting parties an opportunity to review the Federal HPTP, as revised, to ensure consistency of conforming changes such as opportunities for site avoidance, rather than data recovery in the selected alternative. The consulting parties will have thirty (30) calendar days from receipt to provide comments to the Forest on the Federal HPTP. The Forest shall consider the comments from these parties, address them in the final Federal HPTP, and provide a response these parties explaining why certain comments may not be addressed prior to approval of the final Federal HPTP by the Forest. The Forest shall provide all consulting parties with the final Federal HPTP.
- D. The Forest shall ensure that the mitigation measures in the approved Federal HPTP are implemented. Mitigation measures in the Federal HPTP may begin to be implemented upon the Forest's approval of the final MPO and the issuance of any necessary ARPA permits by the Forest and Clean Water Act Section 404 permit by COE. Mitigation treatments in the Federal

HPTP involving data recovery must be completed prior to the commencement of ground-disturbing activities within the affected historic property.

- E. Forest's approval of the final MPO is contingent upon Rosemont's acceptance and Forest approval of the final Federal HPTP.
- F. The Forest will distribute preliminary data recovery reports, including recommendations for further data recovery at sites, if appropriate, to SHPO and consulting parties for expedited (within 15-days) review and comment. Comprehensive, draft data recovery reports for the Federal HPTP will be distributed to consulting parties. The consulting parties will have thirty (30) days from receipt to provide comments to the Forest on the comprehensive, draft data recovery reports. The Forest shall consider the comments from these parties, address them in the final data recovery reports, and provide a response to these parties explaining why certain comments may not be addressed prior to approval of the final data recovery reports by the Forest. The Forest shall provide all consulting parties with the final data discovery reports.

III. Best Management Practices for Adverse Effects

Rosemont will:

- A. Comply with the conditions and mitigation measures set forth in this MOA and implement the Federal HPTP and the Utilities HPTP, including on Rosemont-owned lands, and report this compliance to the Forest.
- B. Ensure that driving occurs only on existing roads or roads constructed with approval of the Forest, and that any ground-disturbing activity between the boundary fence and the security fence will be authorized by the final MPO or by approval of the Forest if not included in the final MPO, and will follow the procedures specified in the Federal HPTP, or as required in emergency situations.
- C. Coordinate with Tohono O'odham Nation, Mescalero Apache Tribe, Salt River Pima-Maricopa Indian Community, and the Forest to develop and implement a cultural sensitivity training program and archaeological monitor training program.
- D. Ensure that, as appropriate, Project personnel, including employees and contractors, engaged in ground-disturbing activities, will receive cultural-sensitivity training and ongoing training on site protection measures, including information on the statutes and regulations protecting cultural resources.
- E. Assist the Forest and COE in the implementation of the Federal and Utilities HPTPs by funding, coordinating, or conducting either directly or through the use of qualified consultants, the treatment measures specified in the Federal and Utilities HPTPs.
- F. Ensure any information regarding the invitation or execution of a ceremony associated with the Project is not publicized.

IV. Treatment and Voluntary Measures for Adverse Effects to *Ce:wi Duag* TCP (Exhibit B, Chapter 6)

A. Plant Resources

1. On Forest lands, opportunities to collect plants for traditional, medicinal, and ceremonial uses will continue with requests for collection coordinated by the Forest Archaeologist. Requests for collection will also be coordinated with Rosemont to ensure that proper health and safety requirements are met.
2. Rosemont will schedule a week during which tribal representatives can visit the mine area before construction to collect specimens of agave, sotol, yucca, beargrass, coral bean, and medicinal plants. All tribal representatives will undergo necessary safety training before entering the APE, and access will be coordinated with Rosemont. Prior to the removal of any plants, Tribes may perform ceremonies.
3. Where appropriate, Rosemont will incorporate culturally important plants in Rosemont's reclamation seed mixture. Species selected for the revegetation mix will be those that can be successfully propagated by seed and for which seeds are readily available in quantity.
4. Rosemont will permit collection of plants on conservation lands to the extent allowable under conservation requirements. Rosemont will coordinate access to the conservation lands by tribal representatives and may require a five (5) day notice of request for access.

B. Animal Resources

To the extent allowable under conservation requirements, the conservation lands set aside for the COE Clean Water Act, Section 404 Permit for the Project will be available to Tribal representatives for hunting, providing that the licenses and tags from Arizona Game and Fish Department have been obtained for large and small game. Other U.S. Department of Agriculture, National Forest system lands and State lands are available for hunting.

C. Springs and Mineral Resources

1. As part of the week-long visit by Tribal representatives to be facilitated by Rosemont before land disturbance begins, there will be an opportunity for Tribal representatives to conduct blessing ceremonies at the springs and to collect mineral resources associated with them and other areas within the APE.
2. Access to Forest lands within the perimeter fence for medicinal, ceremonial, and traditional uses will be coordinated by the Forest Archaeologist in compliance with US Department of Agriculture, Forest Service regulations and policy and with Rosemont to ensure compliance with health and safety requirements.

D. Cultural Landscape

1. Rosemont will provide access to the conservation lands by tribal representatives for ceremonial purposes and may require five (5) days advance request.
2. No later than the end of the third production year, Rosemont will create an exhibit at the Rosemont Public Visitor Center that describes the 7,000 years of occupation in the project area, the importance of *Ce:wi Duag*, and the new knowledge gained as a result of the data recovery conducted for the Project.
3. Concurrently with Item 2 above, Rosemont will use the information developed for the exhibit to create public brochures that will be accessible online via Rosemont and the Forest websites.

4. Any interpretive exhibit, brochure, or other production that presents material about Ce:wi Duag or the Native American occupation and use of the area will be made in consultation with the Tribes.

V. Utilities Historic Properties Treatment Plan (Utilities HPTP)

- A. The Utilities HPTP (Exhibit C) will describe all historic properties within the APE on State, private, and Federal land within the utility corridor and the nature of those effects and prescribes treatments to avoid, minimize, or mitigate those effects. The Utilities HPTP contains a Data Recovery Strategy, procedures for treating human remains, a discovery plan for inadvertent discoveries, and a monitoring plan.
- B. The draft Utilities HPTP will be revised after the Forest's Draft ROD is issued and an alternative selected. Amendments to the Utilities HPTP will be consistent with the version made available at the time the MOA is signed. Only conforming changes to account for final project design and to present measures taken to avoid, reduce, or mitigate effects to historic properties subject to effects from the selected alternative will be made.
- C. Within thirty (30) calendar days of the issuance of the Forest's Draft ROD, the Forest will provide consulting parties an opportunity to review the Utilities HPTP, as revised, to ensure consistency of conforming changes, such as opportunities for site avoidance rather than data recovery in the selected alternative. The consulting parties will have thirty (30) calendar days from receipt to provide comments to the Forest on the Utilities HPTP. The Forest shall consider comments from these parties and approve the final Utilities HPTP, but only after ASLD, ASM, and SHPO concur that State law requirements and the conditions of the ACC's Certificate of Environmental Compatibility have been fulfilled. The Forest shall provide all consulting parties with the final Utilities HPTP.
- D. The Forest shall ensure the treatment measures in the approved Utilities HPTP on Federal and private lands are implemented. The COE shall ensure the treatment measures in the approved Utilities HPTP on State land within its permit area are implemented. The ASLD retains responsibility for ensuring compliance with the Utilities HPTP for historic properties located on State lands outside the COE's permit area. Mitigation measures in the Utilities HPTP may begin to be implemented upon the Forest's approval of the final MPO, and after the COE issues its Section 404 Permit and the ASLD issues its right-of-way.
- E. The Forest will distribute preliminary data recovery reports, including recommendations for further data recovery at sites, to SHPO, ASM, and other consulting parties for expedited (within 15 days) review and comment. Comprehensive, draft data recovery reports for the Utilities HPTP will be distributed to consulting parties. The consulting parties will have thirty (30) calendar days from receipt to provide comments to the Forest on the comprehensive, draft data recovery reports. The Forest shall consider the comments from these parties, address them in the final data recovery reports, and provide a response these parties explaining why certain comments may not be addressed prior to approval of the final data recovery reports by the Forest. The Forest shall provide all consulting parties with the final data recovery reports.

VI. CURATION

Collections made during the course of the implementation of the Federal HPTP, including material remains collected during data recovery and associated records, will be curated in accordance with the provisions of the permits issued by the Forest under the ARPA and by the ASM under the Arizona Antiquities Act. Collections will be curated at a repository meeting the standards of 36 CFR § 79, "Curation of Federally-Owned and Administered Archaeological Collections" and ASM standards, with preference given to a tribal curation facility meeting those standards. Rosemont will fund such curation of collections.

VII. SYNTHESIS REPORT

Within one year of the completion of all data recovery reports required in the final Federal HPTP and final Utilities HPTP, Rosemont will submit a draft synthesis report to the Forest. The synthesis report shall integrate the results of data recovery for both the Federal and Utilities HPTPs, presenting summaries of the results of excavations and analyses of artifacts and other materials. The report will discuss how the results of data recovery addressed the expectations of the research design and how the results contribute to our knowledge of prehistoric and historic life ways and land use. The Forest shall provide the draft synthesis report to the consulting parties who may provide comments within sixty (60) calendar days of receipt. The Forest shall consider the comments from these parties, address them in the final report, and provide a response these parties explaining why certain comments may not be addressed prior to Forest's approval of the final report. The Forest shall provide all consulting parties with the final report.

VIII. REPORTING

Each calendar year following the execution of this MOA, within ninety (90) calendar days of the anniversary date of signing, the Forest will provide all consulting parties a summary report detailing work undertaken pursuant to its terms. Such report will convey a summary of work conducted in accordance with the Federal and Utilities HPTPs, proposed scheduling changes, and problems encountered and proposed resolutions. The Forest will invite consulting parties to an annual meeting to discuss the annual report and the implementation of the MOA and Federal and Utilities HPTPs in general.

IX. CONFIDENTIALITY

To the extent allowed by Federal and State law, information on the location and nature of all cultural resources and traditional cultural information shall be held confidential as provided by Section 304 of the NHPA (16 U.S.C. § 470w-3); 36 CFR § 800.11(c), Section 9 of the ARPA (16 U.S.C. § 470hh; 43 CFR § 7.3), Region 3 Programmatic Agreement with SHPO, as amended, and other applicable Federal laws, and by A.R.S. § 39-125.

X. TERM OF AGREEMENT

This MOA will be effective on the date of the final signature of the Signatories and will continue in effect for the duration of the final MPO unless it is terminated earlier in accordance with Article XI below. Per 36 CFR § 800.6(c)(2)(iv), the refusal of any party invited to become a signatory will not invalidate this MOA.

XI. POINTS OF CONTACT

- A. The points of contact designated to speak for the Signatories, Invited Signatory, and concurring parties and to make notifications, requests, reports, or other contacts for or to the Signatories, Invited Signatory, or concurring parties are listed in Exhibit D.
- B. Any Signatory, Invited Signatory, or concurring party may add to or change its designated point(s) of contact by providing written notice of the addition or change to any Forest point of contact listed in Exhibit D. The written notice must come from either (a) an authorized point of contact for the relevant party listed in Exhibit D; (b) the chief executive or governing body of the respective Signatory, Invited Signatory, or concurring party; or (c) a person designated in writing by such governing body to speak on its behalf.
- C. The Forest will notify Signatories, Invited Signatory, and concurring parties whenever a point of contact is added or changed as provided herein.

XII. TRANSFER OF PERMITS TO SUCCESSOR

Any transfer or assignment of the final MPO for the Project to another party will require the assignee or successor to assume all responsibilities of Rosemont under this MOA for mitigation of adverse effects, and any successor or assign of Rosemont is bound to the terms of this MOA. Any transfer or assignment of the permits for the Project to another party will require the assignee or successor to sign an amendment to this MOA to become an invited signatory at the time of transfer or assignment. All consulting parties will be notified if an amendment to reassign the duties of Rosemont is proposed.

XIII. AMENDMENTS

Any Signatory or Invited Signatory may request an amendment to the terms of this MOA. This MOA may be amended when such an amendment is agreed to in writing by all Signatories and Invited Signatory. The amendment will be effective on the date a copy signed by all of the Signatories is filed with the ACHP. Copies of all amendments will be sent to the consulting parties.

XIV. DISPUTE RESOLUTION

Should any Signatory or Invited Signatory to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the Forest shall consult with such party to resolve the objection. If the Forest determines that such objection cannot be resolved, it will:

- A. Forward all documentation relevant to the dispute, including the Forest's proposed resolution, to the ACHP. The ACHP shall provide the Forest with its advice on the resolution of the objection within thirty (30) calendar days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the Forest shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, Signatories, and Invited Signatories and provide them with a copy of this written response. The Forest will then proceed according to its final decision.

- B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) calendar day time period, the Forest may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the Forest shall prepare a written response that takes into account any timely comments regarding the dispute from the Signatories and Invited Signatory to the MOA, and provide them and the ACHP with a copy of such written response.
- C. It is the Forest's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.
- D. If a consulting party objects to any actions proposed or the manner in which the terms of this MOA are implemented, they may inform any Signatory in writing and any Signatory may, at the Signatory's discretion, choose to pursue the procedures outlined above.

XV. TERMINATION

- A. If any Signatory or Invited Signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the Signatories and Invited Signatory to attempt to develop an amendment per Stipulation XIV, above. If within thirty (30) days (or another time period agreed to by all Signatories and Invited Signatory) an amendment cannot be reached, any Signatory may terminate the MOA upon written notification to the other Signatories and Invited Signatory.
- B. Once the MOA is terminated, the Forest and COE must either (a) execute an MOA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. The Forest and COE shall each notify the other Signatories and Invited Signatory as to the course of action it will pursue. If terminated, all actions by Rosemont will continue to be subject to the applicable requirements of other relevant laws such as the ARPA, NAGPRA, Clean Water Act, and applicable state laws. If the MOA is terminated, the Forest and COE will use available enforcement authorities to prevent or minimize adverse effects to historic properties until the reinitiated Section 106 process is completed.

XVI. EXECUTION AND COMPLETION OF SECTION 106

Execution of this MOA by the Forest, COE, SHPO, ACHP, and subsequent implementation of its terms evidences that the Forest and COE have taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment and that the Forest and COE have satisfied their responsibilities under Section 106.

XVII. AUTHORIZING SIGNATURES

In witness hereof, the following authorized representatives of the parties have signed their names on the dates indicated, thereby executing this agreement. This MOA may be signed by the Signatories and Invited Signatory using photocopy, facsimile, or counterpart signature pages. The Forest will distribute copies of all signed pages to the Signatories, Invited Signatory, and concurring parties, once the MOA is executed.

SIGNATORIES:

USDA FOREST SERVICE, SOUTHWESTERN REGION

Calvin N. Janyis Date 10/22/13
Calvin N. Janyis, Regional Forester

ARIZONA STATE HISTORIC PRESERVATION OFFICER

James Garrison Date 11/5/13
James Garrison, Arizona State Historic Preservation Officer

ADVISORY COUNCIL ON HISTORIC PRESERVATION

John M. Fowler Date 11/6/13
John M. Fowler, Executive Director

U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT

David L. Callahan Date 10-22-13
David L. Callahan, Chief, Regulatory Division

INVITED SIGNATORY:

ROSEMONT COPPER COMPANY

Rod Price Date 10/22/13
Rod Price, Chief Executive Officer

CONCURRING PARTIES:

AK-CHIN INDIAN COMMUNITY

Louis J. Manuel, Jr. Date
Louis J. Manuel, Jr., Chairperson

FORT SILL, APACHE TRIBE

Jeff Houser Date
Jeff Houser, Chairperson

GILA RIVER INDIAN COMMUNITY

_____ Date
Gregory Mendoza, Governor

HOPI TRIBE

_____ Date
LeRoy N. Shingoitewa, Chairman

MESCALERO APACHE TRIBE

_____ Date
Sandra Platero, President

PASCUA YAQUI TRIBE

_____ Date
Peter Yucupicio, Chairman

PUEBLO OF ZUNI

_____ Date
Arlen Quetawki, Sr., Governor

SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

_____ Date
Diane Enos, President

SAN CARLOS APACHE TRIBE

_____ Date
Terry Rambler, Chairman

TOHONO O'ODHAM NATION

_____ Date
Ned Norris, Jr., Chairman

WHITE MOUNTAIN APACHE TRIBE

Date
Ronnie Lupe, Chairman

YAVAPAI-APACHE NATION

Date
David Kwail, Chairman

ARIZONA STATE LAND DEPARTMENT

Vanessa Hickman _____
Date 11/1/13
Vanessa Hickman, State Land Commissioner

ARIZONA STATE MUSEUM

Date
Patrick Lyons, Director

PIMA COUNTY

Date
C. H. Huckleberry, County Administrator

TOWN OF SAHUARITA

Date
Duane Blumberg, Mayor

ATTACHMENTS:	Exhibit A.	Description of the Project and Area of Potential Effects
	Exhibit B.	<i>Draft Historic Properties Treatment Plan for the Rosemont Copper Project, Pima County, Arizona</i>
	Exhibit C.	<i>Draft Historic Properties Treatment Plan for Rosemont Copper Utilities, Pima County, Arizona</i>
	Exhibit D.	Points of Contact
	Exhibit E.	References Cited

WHITE MOUNTAIN APACHE TRIBE

Date
Ronnie Lupe, Chairman

YAVAPAI-APACHE NATION

Date
David Kwail, Chairman

ARIZONA STATE LAND DEPARTMENT

Date
Vanessa Hickman, State Land Commissioner

ARIZONA STATE MUSEUM

_____
Date 31 Oct 13
Patrick Lyons, Director

PIMA COUNTY

Date
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Exhibit A

Description of the Project and Area of Potential Effects

Augusta Resource Corporation (Augusta Resource), the parent company of Rosemont Copper Company (Rosemont Copper), submitted a preliminary mine plan of operations (MPO) to the Coronado National Forest (Coronado) for development of the Rosemont ore deposit. The proposed mine site is located on the east side of the Santa Rita Mountains in the Nogales Ranger District, approximately 30 miles south of Tucson, Arizona (Figure 1). Mining activity is proposed on approximately 995 acres of private land owned by Rosemont Copper, 3,670 acres of National Forest System land, and 75 acres of Arizona State Land Department land administered as a State Trust. This includes a proposed utility corridor that is needed to provide utility services to the mine operation.

The Coronado has prepared a Draft Environmental Impact Statement (DEIS), in which several different alternatives were developed and analyzed. The specific Area of Potential Effect (APE) differs for each of the alternatives. All but the "No Action" alternative are expected to have adverse effects on multiple historic properties. A preferred alternative will be identified in the Final Environmental Impact Statement (FEIS). The draft Federal HPTP for the mine and draft Utilities HPTP for the utility corridor include all historic properties that would be adversely affected by any of the alternatives considered in the DEIS.

All action alternatives include a suite of proposed activities. The mine operation area includes an open pit, waste rock facility, tailings facility, heap leach facility, plant site and ancillary facilities, mine primary access road, and utility maintenance road. The full time-span of the mine, including construction, operation, reclamation, and closure, is expected to be between 24.5 and 30.0 years. The mine pit would be between 6,000 and 6,500 feet in diameter, with a final depth of up to 3,000 feet at the end of mine operation, encompassing an estimated 955 acres (590 acres of privately held land and 365 acres of Coronado land). A plant site for ore processing and other activities would be located to the northeast of the open pit. Waste rock and tailings would be placed in areas outside the open pit; locations vary with the different alternatives.

A new two-lane paved road, referred to as the "primary access road," would be constructed to provide primary access between State Route 83 and the mine. An unpaved "utility maintenance road" would be located within the utility corridor to provide access to a 138-kV electrical transmission line, a water supply line, and water-booster pump stations.

Two fences would enclose the mine operation area during its construction and operation. A 5-strand barbed wire security fence would surround the mine pit, facilities, and waste rock/tailings, and would be patrolled along an adjacent dirt road. A guarded entryway would be located where the fence intersects the access road. An outer perimeter fence, also 5-strand barbed wire, would be established outside of the security fence to restrict public access during construction and operation. The outer perimeter fence would effectively define the area made inaccessible to the public during the mining project. Portions of existing Forest Service roads and the Arizona National Scenic Trail within the fenced area would be decommissioned and rerouted to provide public access to areas outside the perimeter fence.

In addition to rerouting the Arizona Trail and Forest Service roads, connected actions include the construction of utility corridors, service roads, and access roads for the project, and potential rerouting of additional Forest roads and trails, as necessary.

In 2012 the Arizona Corporation Commission approved a utility corridor that is 500 feet wide, but construction would occur within a right-of-way typically less than 60-feet in width within much of that corridor; in a few locations, the disturbance corridor is wider to accommodate pumping stations or cut-and-fill operations in areas of steep, rugged terrain. The 138-kV transmission line would bring power from the Sahuarita substation over the Santa Rita ridgeline and into the mine operation area. Monopoles would be between 75 and 150 feet tall, except at major road or line crossings, where poles would not exceed 199 feet. The proposed water pipeline consists of 20-inch diameter piping that will be fitted and installed below the existing ground surface. Up to four booster stations would be built along the water pipeline and an unpaved service road would be constructed within this corridor where needed.

A total of approximately 5,300 to 6,200 acres would be utilized for the mine and connected actions, depending on the alternative selected. Upon closure of the mine and completion of reclamation, the facilities and utilities would be removed as a condition of the Arizona Corporation Commission's Certificate of Environmental Compatibility (CEC); the open pit, waste rock, and tailings would remain.

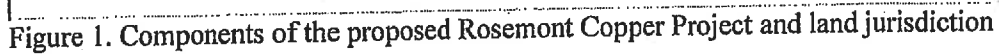
An APE for direct physical effects to historic properties is expected for each of the proposed actions. Archaeological sites in the areas of the mine pit, facilities, and waste rock and tailings storage would be effectively removed or buried. Which historic properties would be adversely affected depends on the project alternative selected and whether project design can be altered to avoid direct impacts. Historic properties between the perimeter and security fences should not be adversely affected by direct effects since new ground disturbance would be minimized. Effects on archaeological sites in the utility corridor are more limited since ground disturbance from both the transmission line and the water line are more restricted in scope.

An APE for indirect visual, atmospheric, and audible effects to historic properties is also expected from many of the proposed actions. Indirect effects such as these have a potential to diminish the integrity of historic properties, including undisturbed parts of the *Ce:wi Duag* Traditional Cultural Property (TCP). Figure 2 shows the location of *Ce:wi Duag* TCP with respect to the APE for visual effects for the mine, facilities, waste rock/tailings deposits, and transmission line.

The APE for visual effects is defined as those areas where project activities are visible, generalized from viewshed analysis. The designated APE for visual effects for the mine and waste rock deposits includes areas extends approximately six miles (10 km) from the mine. The mine would not be visible from all locations within this area since elevated landforms block the view from many low-lying areas. The APE for visual effects encompasses the area of audible and atmospheric effects that have the potential to alter the qualities of historic properties.

Figure 2 also shows the mine visible from most of the northern portion of the Santa Rita Mountains, east of the ridge crest of the mountains; it would not be visible from the west side of the ridge crest. Mine and waste rock deposits would be visible from much of the northern half of the *Ce:wi Duag* TCP. Two National Register of Historic Places listed historic properties are located on the east side of the Santa Rita Mountains (Empire Ranch Headquarters and Kentucky Camp). Each is listed on the National Register of Historic Places in recognition of their architectural characteristics and importance to history. Mine operations would not be visible from either site.

The APE for visual effects for the monopole transmission line is considered to extend one-half mile (0.8 km) from the utility corridor centerline, based on consultation with State Historic Preservation Office. Although the transmission line may be visible outside this corridor, its visual intrusiveness would diminish with distance. CEC conditions stipulate visual mitigation for the utility corridor. For the transmission line, non-specular conductor and dulled-surface transmission structures will be installed. Also within the utility corridor, Rosemont will minimize vegetation disturbance and will perform revegetation to preconstruction conditions. The CEC conditions further stipulate that Rosemont will file an annual certification that the transmission line is needed, and once service is no longer required, that the transmission line will be removed and environmental remediation will be performed.



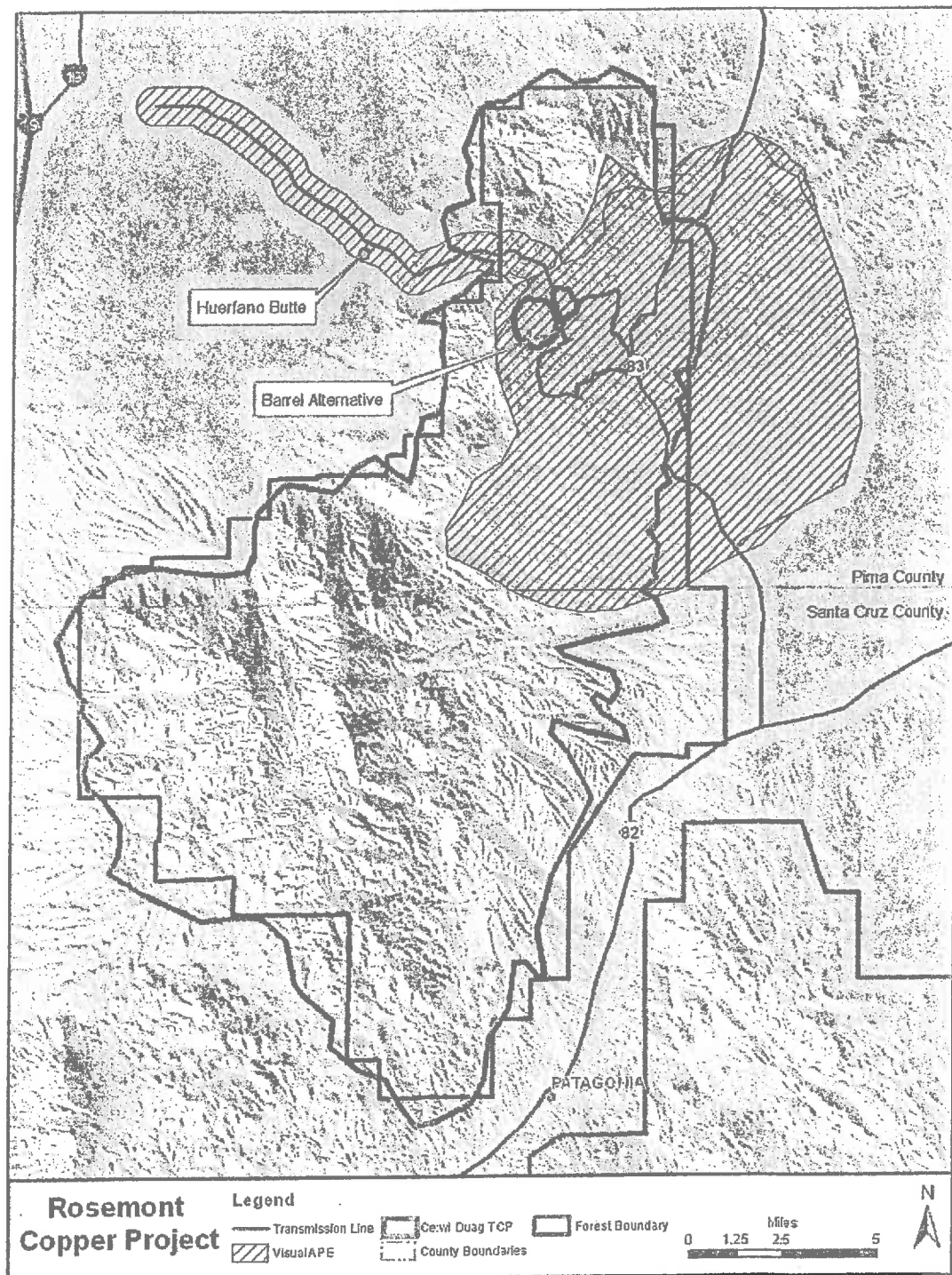


Figure 2. Map showing Area of Potential Effect for visual impacts of the mine operation and transmission line in relation to identified Traditional Cultural Properties

Exhibit B
Draft Historic Properties Treatment Plan for the Rosemont Copper Project
Pima County, Arizona

Intentionally not included.

Exhibit C
Draft Historic Properties Treatment Plan for Rosemont Copper Utilities
Pima County, Arizona

Intentionally not included.

Exhibit D
Designated Points of Contact (POC)

Tribal Government	Tribal Chairperson/ President/ or Governor	Designated POC
AK-CHIN INDIAN COMMUNITY	Louis J. Manuel, Jr. Chairperson 42507 West Peters & Nall Road Maricopa, AZ 85239 (520) 568-2227	Caroline Antone Cultural Resources Program Manager 42507 W. Peters & Nall Road Maricopa, AZ 85239
FORT SILL APACHE TRIBE	Jeff Houser Chairperson Route 2, Box 121 Apache, Oklahoma 73006 (580) 588-2298	L. Michael Darrow Secretary-Treasurer/NAGPRA Coordinator Route 2, Box 121 Apache, OK 73006 (580) 588-2298
GILA RIVER INDIAN COMMUNITY	Gregory Mendoza Governor P.O. Box 97 Sacaton, AZ 85247	Barnaby V. Lewis Tribal Historic Preservation Officer Cultural Resource Management Program Dept. of Land and Water Resources P.O. Box 2140 Sacaton, AZ 85247 (520) 562-7152
HOPI TRIBE	LeRoy N. Shingoitewa Chairman P.O. Box 123 Kykotsmovi, AZ 86039 (928) 734-3102	Leigh Kuwanwisiwma Director Hopi Cultural Preservation Office P.O. Box 123 Kykotsmovi, AZ 86039 (928) 734-3612 (928) 734-2331 fax
MESCALERO APACHE TRIBE	Sandra Platero President P.O. Box 227 Mescalero, NM 88340 (575) 464-4494	Holly Houghten Tribal Historic Preservation Officer Resource Management and Protection P.O. Box 227 Mescalero, NM 88340 (575) 464-3005 (575) 464-4637 fax
PASCUA YAQUI TRIBE	Peter Yucupicio Chairman 7474 S. Camino De Oeste Tucson, AZ 85746 (520) 883-5000 (520) 883-5014 fax	Veronica Darnell Attorney General Office 7474 S. Camino De Oeste Tucson, AZ 85746 (520) 883-5106

Tribal Government	Tribal Chairperson/ President/ or Governor	Designated POC
SALT RIVER PIMA- MARICOPA INDIAN COMMUNITY	Diane Enos President 10005 E. Osborn Scottsdale, AZ 85256 (480) 850-8000 (480) 850-7277 fax	Shane Anton Cultural Programs Supervisor Community Development Department and Cultural and Environmental Services 10005 E. Osborn Road Scottsdale, AZ 85256 (480) 362-6331
SAN CARLOS APACHE TRIBE	Terry Rambler Chairman P.O. Box 0 San Carlos, AZ 85550 (928) 475-2361 (928) 475-2567 fax	Vernelda J. Grant Tribal Historic Preservation Officer Historic Preservation and Archaeology Department P.O. Box 0 San Carlos, AZ 85550 (928) 475-5797
TOHONO O'ODHAM NATION	Ned Norris, Jr. Chairman P.O. Box 837 Sells, AZ 85634 (520) 383-2028	Peter Steere Tribal Historic Preservation Officer P.O. Box 837 Sells, AZ 85634 (520) 383-0202
WHITE MOUNTAIN APACHE TRIBE	Ronnie Lupe Chair P.O. Box 1150 Whiteriver, AZ 85941 (928) 338-4346 x 201 (928) 338-1514 fax	Mark Altaha Tribal Historic Preservation Officer P.O. Box 507 Whiteriver, AZ 85926 (928) 338-3033 (928) 338-6055 fax
YAVAPAI-APACHE NATION	David Kwail Chairman 2400 W. Datsi Street Camp Verde, AZ 86322 (928) 567-3649; (928) 567-3994 fax	Vincent Randall Apache Culture Manager P.O. Box 21 Clarksdale, AZ 86324 (928) 649-6960
PUEBLO OF ZUNI	Arlen Quetawki, Sr. Governor Zuni Tribal Council P.O. Box 339 Zuni, NM 87327 (505) 782-4481; (505) 782-2700 fax	Kurt Dongowski Tribal Historic Preservation Officer Zuni Heritage and Historic Preservation Office P.O. Box 339 Zuni, NM 87327 (505) 782-4814

Federal/State or Local Government	Authorized Official	Designated POC
ADVISORY COUNCIL ON HISTORIC PRESERVATION	John M. Fowler Executive Director 1100 Pennsylvania Ave, NW, Suite 803 Washington, DC 20004	Katry Harris Program Analyst 1100 Pennsylvania Ave, NW, Suite 803 Washington, DC 20004 (202) 606-8520
ARIZONA STATE HISTORIC PRESERVATION OFFICE	James Garrison Arizona State Historic Preservation Officer 1700 W. Washington St. Phoenix, AZ 85007	Ann Howard Deputy Arizona State Historic Preservation Officer James Cogswell Compliance Specialist 1700 W. Washington St. Phoenix, AZ 85007 (602) 542-7142
ARIZONA STATE LAND DEPARTMENT	Vanessa Hickman State Land Commissioner 1616 W. Adams St. Phoenix, AZ 85007	Steve Ross Cultural Resource Manager 1616 W. Adams St. Phoenix, AZ 85007 (602) 542-2767
ARIZONA STATE MUSEUM	Patrick Lyons Director 1013 E. University Blvd. Tucson, AZ 85721	Todd Pitezel Curator of Mandated Programs 1013 E. University Blvd. Tucson, AZ 85721 (520) 621-4795
PIMA COUNTY	C. H. Huckleberry County Administrator Pima County Administrator's Office 130 W. Congress Ave. 10 th Floor Tucson, AZ 85701	Linda Mayro Cultural Resources Manager Loy Neff Cultural Resources and Preservation Division Manager Pima County Cultural Resources and Historic Preservation Office 201 N. Stone Ave. Tucson, AZ 85701 (520) 724-8794
TOWN OF SAHUARITA	Duane Blumberg Mayor 375 W. Sahuarita Center Way Sahuarita, AZ 85629	Orlantha Henderson Planner 375 W. Sahuarita Center Way Sahuarita, AZ 85629 (520) 822-8800

Federal/State or Local Government	Authorized Official	Designated POC
U.S. ARMY CORPS OF ENGINEERS LOS ANGELES DISTRICT	David J. Castanon Chief, Regulatory Division 915 Wilshire Blvd Los Angeles, CA 90017	Sallie Diebolt Chief AZ Branch Regulatory Division 3636 N Central Ave, Suite 900, Phoenix, AZ 85012 (602) 230-6950 Marjorie Blaine Senior Project Manager 5205 E. Camanche Street Tucson, AZ 85707 (520) 670-6277
U.S. DEPARTMENT OF AGRICULTURE FOREST SERVICE SOUTHWESTERN REGION	Calvin N. Joyner Regional Forester USDA Forest Service Southwest Regional Office 333 Broadway SE Albuquerque, NM 87102	Jim Upchurch Forest Supervisor Jamie Kingsbury Deputy Forest Supervisor William Gillespie Forest Archaeologist Coronado National Forest 300 W. Congress St., Ste. 600 Tucson, AZ 85701 (520) 388-8300 (520) 388-8305 fax

Project Proponent	Authorized Official	Designated POC
ROSEMONT COPPER COMPANY	Rod Pace Chief Executive Officer PO Box 35130 Tucson, AZ 85740	Kathy Arnold Vice President Environmental and Regulatory Affairs PO Box 35130 Tucson, AZ 85740 (520) 297-7723

Exhibit E

References Cited

- Barr, D.M., I.S. Hesse, S.J. Hesse, J.E. Hider, S. Griset, E.S. Peterson, II, and D.B. Tucker. 2010. *Archaeological Survey of Alternatives to the Proposed Rosemont Copper Mine, Pima County, Arizona*. Cultural Resources Report No. 10-334. Prepared for the Coronado National Forest. Prepared on behalf of Rosemont Copper Company. Tucson, Arizona: SWCA Environmental Consultants.
- Chamorro, S. 2011. *A Cultural Resources Inventory of Approximately 84 Acres Near Sahuarita, Pima County, Arizona*. Project No. 1049.29 520 520. Tucson, Arizona: WestLand Resources, Inc.
- Chamorro, S., and A.M. King. 2012. *A Revised Cultural Resources Inventory of Approximately 84 Acres Near Sahuarita, Pima County, Arizona*. Cultural Resources Report 2011-43, Accession No. 2011-0429. Tucson, Arizona: WestLand Resources Inc.
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- Lindly, J., and A.E. Buckles. 2012. *A Cultural Resources Inventory of Two Contiguous Arizona Department of Transportation Encroachment Permit Areas Along State Route 83 For Rosemont Copper, Pima County, Arizona*. Project No. 1049.26 700B 500. Tucson, Arizona: WestLand Resources, Inc.
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Rayle, C.E. 2013. *A Cultural Resource Survey of Additional Areas for the Rosemont Project Utility Corridor, Pima County, Arizona*. EPG Cultural Resource Services Technical Paper No. 2012-23. Prepared for Rosemont Copper Company. Phoenix, Arizona: Environmental Planning Group.

Sheehan, M.S., S. Swanson, and S. Shelley. 2013. *A Cultural Resource Survey for the Rosemont Project Utility Corridor, Pima County, Arizona*. Cultural Resource Services Technical Paper No. 2010-001. Phoenix, Arizona: Environmental Planning Group.

Swanson, S., D. Sunderman, B. Snow, and C. Lonardo. 2012. *A Cultural Resources Survey of the 46kV Alternative and Additional Areas for the Rosemont Project 138kV Line, Pima County, Arizona*. EPG Cultural Resource Services Technical Paper No. 2010-0017. Prepared for Rosemont Copper Company. Phoenix, Arizona: Environmental Planning Group.

Janice K. Brewer
Governor

Bryan Martyn
Executive Director



Board Members

Larry Landry, Phoenix, *Chair*
Walter D. Armer, Jr., Vail
Mark Brnovich, Phoenix
R. J. Cardin, Phoenix
Kay Daggett, Sierra Vista
Alan Everett, Sedona
Vanessa Hickman,
State Land Commissioner

In reply, refer to SHPO-2011-0486(115510)

November 5, 2013

Jim Upchurch, Forest Supervisor
Coronado National Forest
300 W. Congress St.
Tucson, AZ 85701
Attn.: Bill Gillespie, Forest Archaeologist

Re: Rosemont Mine Project Section 106 Memorandum of Agreement

Dear Mr. Upchurch:

After much consideration and discussion with the Arizona State Historic Preservation Office (SHPO) staff, I have decided to sign the Memorandum of Agreement (MOA) for the Rosemont Mine undertaking and its adverse effect on historic properties on the Coronado National Forest (Forest), State Trust land, and private lands. My willingness to sign the MOA should not be interpreted as support for the Rosemont Mine or lack of support for the Tribes. The SHPO is not commenting on the propriety of the Rosemont Mine; such comment from this office is not appropriate. Because of the significance of the project, I felt it important to summarize the rationale behind my decision to sign the MOA.

If I do not sign the MOA, the SHPO would no longer be a participant in the Section 106 process. We would no longer have the capacity for independent review and comment on the finalization and implementation of the Historic Property Treatment Plans (HPTs) for the federal land portion and for the utilities corridor. Both HPTs require considerable revision, and we believe that the Forest could benefit from our comments in revising these important treatment plans. Additionally, if I do not sign the MOA, the Advisory Council on Historic Preservation may not sign. This could effectively terminate Section 106 consultation, with the attendant consequences.

Signing the MOA allows the SHPO to continue to have our concerns presented during implementation of the MOA. By signing the MOA, the SHPO could also continue to represent the Tribes in helping to make their perspectives known.

I am also concerned that not signing this MOA would set a precedent for similar undertakings in Arizona. I am aware that numerous other mines are in the planning stages throughout Arizona, and more are likely to be developed. It would be difficult to say that the SHPO would like involvement in these future consultations if we backed out of the consultation process for the Rosemont Mine undertaking.

We would like to make it clear that the SHPO believes that the Tohono O'odham Nation should have been designated an invited signatory to the MOA. We have previously stated this recommendation to the Forest; however, we recognize that this is the Forest's decision. I understand from recent letters by the Tohono O'odham Nation that they feel that tribal concerns were not adequately represented in the MOA. I note that forwarding mitigation proposals to the Forest, either from the Tribes, this office, or any other consulting party, does not guarantee that they will form part of an agreement. The Forest is obligated to take these comments into account and it is the Forest that makes this determination. I recommend that the Forest continue to consult with the Tohono O'odham Nation to seek their explicit, substantive concerns about the MOA, in hope that these issues can be further taken into account during mitigation. We also recognize that the Tohono O'odham Nation and other Tribes may choose to continue to have their concerns addressed through provisions of the National Environmental Policy Act.

In short, I believe that the SHPO has a long-term obligation to protect historic properties within the Rosemont Mine project area, and failing such protection, to see that adverse effects to these properties are responsibly mitigated. I appreciate your continued consideration of this matter; please let me know if you have any questions or concerns.

Sincerely,



James W. Garrison
State Historic Preservation Officer
Arizona State Parks

Cc: Dr. Ned Norris, Jr., Chairman, Tohono O'odham Nation
Peter Steere, Tribal Historic Preservation Officer, Tohono O'odham Nation
Katty Harris, Program Analyst, Advisory Council on Historic Preservation



Preserving America's Heritage

November 6, 2013

Mr. Jim Upchurch
Forest Supervisor
Coronado National Forest
300 W. Congress
Tucson, AZ 85701

**REF: *Mine Plan of Operations, Rosemont Copper Mine
Coronado National Forest, Arizona***

Dear Mr. Upchurch:

Enclosed is your copy of the fully executed Memorandum of Agreement for the referenced project. By carrying out the terms of the Agreement, you will fulfill your responsibilities under Section 106 of the National Historic Preservation Act and the implementing regulations, "Protection of Historic Properties" (36 CFR Part 800). The original Agreement will remain on file at our office.

The ACHP was contacted by the Chairman of the Tohono O'odham Nation who encouraged the ACHP to not sign the Agreement. This tribe does not intend to sign the Agreement because it does not believe the Forest Service has adequately considered its trust responsibility to Indian tribes when it explored ways to avoid, minimize, or mitigate adverse effects to historic properties. In addition, the tribe, and the other participating tribes, repeatedly requested to be invited to sign the Agreement and views the Forest Service invitation to concur unacceptable.

The ACHP considered the concerns of and opposition by the Tohono O'odham. We have signed the Agreement because the Section 106 review process and the resolution of adverse effects documented in it meet the requirements of the Act and regulations. However, we were frustrated during the course of the Section 106 consultation because Forest Service provided minimal leadership in the review process. For this reason, we cannot recommend this case as a good example of Section 106 consultation where an acknowledged Sacred Site to several Indian tribes, which is also a historic property, is adversely affected by a mining undertaking.

We remind you that Section 2 (2) of the Act states that it is the policy of the federal government to "provide leadership in the preservation of the prehistoric and historic resources of the United States and of the international community of nations and in the administration of the national preservation program in partnership with States, Indian tribes, Native Hawaiians, and local governments." In this case, the Forest Service, as the lead federal agency, struggled to consider the effects of the undertaking and all of its parts to historic properties located on land controlled by the Arizona Division of State Lands. Similarly, the range of alternatives and measures to avoid, minimize, and mitigate adverse effects to historic properties

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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was limited by the actions taken by the Applicant to negotiate separately and confidentially with Indian tribes. In future similar undertakings, we encourage the Forest Service to maintain its leadership role by acknowledging its responsibility to resolve adverse effects of the undertaking and all of its parts and to consult with Indian tribes regarding its decision making.

We look forward to working with the Forest Service at the policy level to seek opportunities to improve the Forest Service leadership in the Section 106 process and consistency with the Sacred Sites Report (2012) and the "Memorandum of Understanding Among the U.S. Department of Defense, U.S. Department of the Interior, U.S. Department of Agriculture, U.S. Department of Energy, and the Advisory Council on Historic Preservation Regarding Interagency Coordination and Collaboration for the Protection of Indian Sacred Sites" (2012). For this reason, we have copied this letter to the Forest Service Federal Preservation Officer, Michael Kaczor, and the Director of the Office of Tribal Relations, Fred P. Clark.

If we may be of further assistance as the Agreement is implemented, Katry Harris by telephone at (202) 606-8520 or by e-mail at kharris@achp.gov.

Sincerely,



for Reid J. Nelson
Director
Office of Federal Agency Programs



Tohono O'odham Nation Office of the Chairman & Vice Chairwoman

COMPASSION FAITH TRADITION RESPECT
T'OHONO O'DHAM NATION HIMPAG OIK'ELIP

Ned Norris, Jr.
Chairman

Wavalene M. Romero
Vice Chairwoman



October 30, 2013

Jim Upchurch, Forest Supervisor
Coronado National Forest
300 W. Congress St.
Tucson, AZ 85701

Via Email and U.S. Mail

RE: Rosemont Mine Project Section 106 Memorandum of Agreement

Dear Supervisor Upchurch:

This letter is to inform you that the Tohono O'odham Nation does not intend to sign the Section 106 Memorandum of Agreement for the Rosemont Copper Project dated October 23, 2013. The Nation and other tribes met with you at a tribal leaders meeting on September 24, 2013. At that meeting, the leaders reiterated a number of the tribal concerns regarding the Project. These concerns include the fact that this Project will irrevocably alter the cultural landscape of Ce:wi Duag (Santa Rita Mountains). Under the preferred alternative, it is expected that 86 cultural resource sites will be destroyed, 32 of which are known or likely to have human remains. This scale of destruction simply cannot be mitigated.

The tribal leaders further indicated that in order to even consider signing the Memorandum of Agreement, all affected tribes would need to be signatories to the Agreement. The Agreement that you forwarded on October 23, 2013, has once again relegated all affected tribes to concurring parties. This designation is simply unacceptable to the Nation. Before the Nation would consider signing this Agreement, all affected tribes would need to be elevated to the level of signatory status.

Additionally, as I indicated in my letter to Secretary Vilsack dated August 20, 2013, which you were copied on, Forest Service representatives early on in the consultation process encouraged tribes to "think outside of the box" in considering mitigation proposals. To that end, the Nation and other tribes have recommended numerous proposals to you and your staff. None of those proposals appear in the Memorandum of Agreement dated October 23, 2013.

Supervisor Upchurch
October 30, 2013
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The Nation is disappointed with the Memorandum of Agreement circulated for signature. Although small language concessions were made here and there, the document does not represent a true collaborative effort with the affected tribes. Although the Forest Service made an effort to listen to the affected tribes, those concerns are not adequately represented in the Memorandum of Agreement. For these reasons, the Nation will not be signing the Memorandum of Agreement dated October 23, 2013.

Sincerely,



Dr. Ned Norris, Jr., Chairman
Tohono O'odham Nation

cc: Katry Harris, Advisory Council on Historic Preservation
Ann Howard, State Historic Preservation Office

✓ Rosemont